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United States District Court
Central District of California
Western Division

12 NATIONAL ASSOCIATION OF
    AFRICAN-AMERICAN OWNED
13 MEDIA, *et al.*,

14   Plaintiffs,

15   v.

16 COMCAST CORPORATION,

17   Defendant.

CV 15-1239 TJH (MANx)

Order

JS-6

18

19   The Court has considered Defendant Comcast Corporation's ["Comcast"] motion

20 to dismiss Plaintiffs' Second Amended Complaint ["SAC"] under Fed. R. Civ. P.

21 12(b)(6), together with the moving and opposing papers.

22   To survive a 12(b)(6) motion, a plaintiff must plead facts sufficient to state a

23 plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The crux of

24 Plaintiffs' claim is that "Comcast's . . . refusal to contract with Plaintiff Entertainment

25 Studios [Network, Inc.]" ["ESN"] was "racially discriminatory."

26   In dismissing the First Amended Complaint ["FAC"], the Court clearly identified

27 the problem: the benchmarks provided by Plaintiffs — allegedly representing demand

28 by viewers for ESN channels — were ambiguous, and did not exclude the alternative

1 explanation that Comcast's refusal to contract with ESN was based on legitimate

2 business reasons. *See Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751

3 F.3d 990, 996 (9th Cir. 2014). The Court went out of its way to suggest cures for the
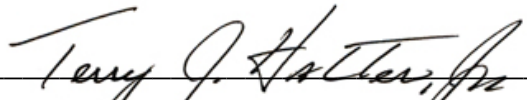
4 pleading deficiencies.

5   In the SAC, Plaintiffs have merely provided the Court with different opaque

6 benchmarks. For example, Plaintiffs added the allegation that eighty million people

7 may have *access* to ESN in all fifty states. But, similar to the viewer growth statistics

8 in the FAC, this allegation represents potential, not actual, demand for ESN content,

9 and thus it does not necessarily undercut the Comcast's alternative explanation. In

10 short, not one fact added to the SAC is either antithetical to a decision not to contract

11 with ESN for legitimate business reasons or, in itself, indicates that the decision was

12 racially discriminatory. Accordingly, the SAC "stops short of the line between

13 possibility and plausibility of entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,

14 678 (2009) (internal quotations omitted).

15   Federal Rule of Civil Procedure 15(a) provides that leave to amend shall be given

16 freely "when justice so requires." Nonetheless, "[r]epeated failure to cure deficiencies

17 by amendments previously allowed is [a] valid reason for a district court to deny a party

18 leave to amend." *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 809–10 (9th Cir.

19 1988). In the Order dismissing the FAC, Plaintiffs were warned, in no uncertain terms,

20 that "leave to amend" would only be provided "one last time." Indeed, the Court

21 specifically stated that "[i]f Plaintiffs file a second amended complaint with pleading

22 deficiencies, this case will . . . be dismissed with prejudice." The deficiencies

23 identified have not been cured.

24

25   Accordingly,

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1   It is Ordered that Comcast's motion to dismiss be, and hereby is, Granted

2   with prejudice.

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4   Date: October 5, 2016

5   _____

6   Terry J. Hatter, Jr.
                     Senior United States District Judge
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